

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

NAJIB SHOUCAIR,

Case No. 07-12964

Plaintiff,

Anna Diggs Taylor
United States District Judge

vs.

Michael Hluchaniuk
United States Magistrate Judge

MILLICENT WARREN AND
CORRECTIONS OFFICERS
DOE 1 AND DOE 2,

Defendants.

**ORDER DENYING PLAINTIFF'S FOURTH MOTION FOR
APPOINTMENT OF COUNSEL WITHOUT PREJUDICE (Dkt. 63)**

The present complaint was filed by plaintiff Najib Shoucair, a prisoner in the custody of the State of Michigan, on July 17, 2007. (Dkt. 1). In that complaint, plaintiff seeks damages against three employees of the Michigan Department of Corrections (MDOC) based on allegations that he was denied certain rights under the United States Constitution.¹ *Id.* This matter is before the Court on plaintiff's fourth motion for appointment of counsel. (Dkt. 63). Plaintiff previously filed

¹ Defendants filed a motion for summary judgment alleging that plaintiff failed to exhaust his administrative remedies. (Dkt. 9). The undersigned recommended that this motion be denied, which recommendation was adopted by the District Court. (Dkt. 15, 22).

motions for the appointment of counsel (Dkt. 20, 26, 45), which this Court denied on May 15, 2008, August 22, 2008, and April 2, 2009, without prejudice. (Dkt. 23, 27, 47). Plaintiff did not appeal these orders to the District Court.

In his second motion for appointment of counsel, plaintiff alleged that because of his closed head injury, which has affected his long and short term memory, the psychotropic medications he takes, the seizures from which he suffers, and his limited use of the English language, counsel should be appointed for him in this case. (Dkt. 26). In the Order denying the second motion, the Court pointed out that plaintiff did not offer any evidence in support of his assertions, such as medical reports, affidavits of medical professionals or records with equivalent degrees of reliability. (Dkt. 27). With his third motion, plaintiff attached some medical records. (Dkt. 45). Most of these records relate to the injuries he suffered in 2006, which is the subject of this lawsuit. In the Order denying the third motion, the Court pointed out that plaintiff did not offer any recent medical records showing any limitation that prevents him from adequately prosecuting this matter on his own. (Dkt. 47).

Under 28 U.S.C. § 1915(e)(1), a federal court may request an attorney to represent an indigent plaintiff. *Reneer v. Sewell*, 975 F.2d 261 (6th Cir. 1992). Except in rare circumstances, it is the practice of this Court to consider the

appointment of counsel in prisoner civil rights cases only where exceptional circumstances exist, or in certain cases only after a motion to dismiss or for summary judgment has been decided. In support of his current request for counsel, plaintiff states that he is unable to afford counsel; the issues involved in this case are complex; that he is unable to effectively investigate the case; that he has no legal education; and that he has limited access to legal resources. (Dkt. 63).

Plaintiff does not offer any substantial and persuasive basis, at this time, for the undersigned to revisit the previous decisions denying the appointment of counsel prior to the resolution, in plaintiff's favor, of a dispositive motion on the substantive issues presented in this case. At this point, the only dispositive motion on the substantive issues has been resolved against plaintiff. (Dkt. 61, 69). Should a dispositive motion on the substantive claims in this case be decided in plaintiff's favor, plaintiff may re-file the motion for the appointment of counsel.

In order to make the determination whether there are exceptional circumstances to appoint counsel, the Court considers the type of case involved, plaintiff's ability to represent himself, as well as the complexity of the case, and also whether the claims being presented are frivolous or have a small likelihood of success. *Reneer*, 975 F.2d at 261; *see also, Mars v. Hanberry*, 752 F.2d 254, 256 (6th Cir. 1995). The Court previously concluded that, from reading the complaint

and other pleadings filed by plaintiff, he has an adequate understanding of the matters involved in this case, and is able to articulate his claims and arguments in a reasonable fashion. (Dkt. 23, 27, 47). Plaintiff offers no evidence or change in circumstance to warrant revisiting the earlier orders denying counsel.

IT IS ORDERED that plaintiff's fourth motion for appointment of counsel is **DENIED WITHOUT PREJUDICE**.

IT IS SO ORDERED.

The parties to this action may object to and seek review of this Order, but are required to file any objections within 10 days of service as provided for in 28 U.S.C. § 636(b)(1) and Local Rule 72.1(d)(2). A party may not assign as error any defect in this Order to which timely objection was not made. Fed.R.Civ.P. 72(a). Any objections are required to specify the part of the Order to which the party objects and state the basis of the objection. Pursuant to Local Rule 72.1(d)(2), any objections must be served on this Magistrate Judge.

Date: October 8, 2009

s/Michael Hluchaniuk
Michael Hluchaniuk
United States Magistrate Judge

CERTIFICATE OF SERVICE

I certify that on October 8, 2009, I electronically filed the foregoing pleading with the Clerk of the Court using the ECF system, which will send notification of such filing to the following: Clifton B. Schneider, and I certify that I have mailed by United States Postal Service the foregoing pleading to the plaintiff, a non-ECF participant, at the following addresses: Najib Shoucair, # 252899, 3250 Pelham Road, Dearborn, MI 48214.

s/James P. Peltier _____
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